CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 31 AUGUST 27, 1997 NO. 35

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 97–71)

REVOCATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on July 15, 1997, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). These licenses were issued in the Los Angeles District. The list of affected brokers is as follows:

Broker	*License No.*
Valerie J. Abe	11778
Ruth Ardette Abejon	10485
Joan Virginia Allen	10482
June Amaral	10484
David Lee Coggin	11138
Lana Boyd Cohen	10726
Clive R. Costley	04153
Aaron Ralph Davidson	14085
George Dobovanszky	14244
Regina M. Farin	11771
Muir Ferdun	11096
Linda Solveig Gerwig	09336
Lisa L. Giuletti	11144
William Crayton Haynes	11942
Candace T. Hickman	05627
Duk Ee Hong	15247
Julia Marie Hurley	10727
Barbara Jacobs	13173
Vinh Nguyen Le	15111
Morgan Libby	11194
James R. Linnehan	05413
Caslav S. Maksimevic	11087
James Boyd McIntyre JR	13067
Karinina Mareia Mitts	14525
Timothy Morales	06655
Robert Nolan Murphy	13426
Bruce E. Peterson	03871

Broker	*License No.*
Aleksandar Dusan Protic	13882
Pamela Louise Schnetter	13140
Gordon Stevens	07192
Ronald W. Wall	12203
Evelyn Y. Williams	12228
James Shigeru Yamashiro	09787

Dated: August 11, 1997.

PHILIP METZGER,
Director,
Trade Compliance.

[Published in the Federal Register, August 21, 1997 (62 FR 44514)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 12, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF GENERAL NOTICE AND CUSTOMS RULING LETTER RELATING TO THE REFUND OF MERCHANDISE PROCESSING FEES ON POST-IMPORTATION DUTY REFUND CLAIMS UNDER THE NAFTA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a General Notice and ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the refund of merchandise processing fees on post-importation duty refund claims under the NAFTA, pursuant to 19 U.S.C. 1520(d). Comments are invited on the correctness of the proposed ruling. Customs also intends to modify a General Notice published in the CUSTOMS BULLETIN.

DATE: Comments must be received on or before September 26, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings,

Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Entry and Carrier Rulings Branch, (202) 482–7028.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the refund of merchandise processing fees (MPFs) on post-importation duty refund claims under the NAFTA, pursuant to 19 U.S.C. 1520(d). Customs also intends to modify a General Notice published in the CUSTOMS BULLETIN.

On January 29, 1997, Customs published a General Notice on Post-Importation Duty Refund Claims Under the NAFTA in the CUSTOMS BULLETIN, Volume 31, Number 5, page 1. This notice set forth Customs position regarding claims under 19 U.S.C. 1520(d), which provides as follows:

> Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—
>
> (1) a written declaration that the good qualified under those rules at the time of importation;
>
> (2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and
>
> (3) such other documentation relating to the importation of the goods as the Customs Service may require.

The regulations issued under 19 U.S.C. 1520(d) can be found in 19 CFR, Part 181, Subpart D.

Claims under section 1520(d) must be filed within one year from the date of importation regardless of the liquidation status of the entry. Further, section 1520(d) provides the exclusive remedy for importers seeking post-importation NAFTA duty treatment. 19 CFR 181.21(a), which closely follows the language of Article 501(1) of the NAFTA, provides that a U.S. importer must, at entry, make a written declaration that the good qualifies for preferential tariff treatment. Such declaration cannot be made unless the importer possesses a "complete and

properly executed original Certificate of Origin, or copy thereof." Because section 1520(d) is the exclusive authority to make a post-importation claim, a claim for preference that is raised for the first time in a protest filed after the one-year period expires will be denied. In that situation, the liquidation without NAFTA treatment is presumed to be correct. Accordingly, an importer cannot, under the guise of challenging a Customs decision, protest under 19 U.S.C. 1514 its own failure to meet the necessary legal requirements set forth in section 181.21(a).

In the General Notice, we found that MPFs collected pursuant to 19 U.S.C. 58c(a)(9)(A) were not "customs duties." Accordingly, we found that because MPFs were not "excess [customs] duties," Customs could not refund them pursuant to a section 1520(d) claim.

In HQ 227245, dated May 6, 1997, we found that the requirements for a section 1520(d) post-importation duty refund claim had been met for a particular entry, and granted the protest for this entry, *"as to duties only* (underlining in original)." Quoting the General Notice, we stated that "'[merchandise processing fees] may not be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31.'"

Based on additional material from Customs officials and the public, we have determined that MPFs may be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31. It is therefore necessary to modify this portion of the *General Notice,* and therefore, HQ 227245.

Before modifying HQ 227245, consideration will be given to any written comments timely received. The General Notice can be modified without the solicitation of comments because it is not being modified pursuant to 19 U.S.C. 1625(c)(1). However, we will, if necessary, modify both HQ 227245 and the General Notice at the same time (following the comment period). HQ 227245 is set forth in Attachment A to this document. Proposed HQ 227605 revoking HQ 227245 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: August 11, 1997.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 6, 1997.

LIQ–2–01/LIQ–2–02/LIQ–9/LIQ–10/
PRO–2–02–RR:IT:EC 227245 PH
Category: Liquidation

PORT DIRECTOR OF CUSTOMS
819 Water Street, Building 6
Laredo, TX 78040

Attn: Protest Section

Re: Protest 2304–96–100159; claim for preferential tariff treatment under NAFTA; 19 U.S.C. 1514; 19 U.S.C. 1520(d); 19 CFR 181.31.

DEAR SIR OR MADAM:

The above-referenced protest was forwarded to this office for further review. We have considered the evidence provided and the arguments made on behalf of the importer, as well as Customs records relating to this matter. Our decision follows.

Facts:

According to the file and Customs records, on February 22 and 28, 1995, the protestant imported certain paint products, described on the Entry Summaries (Customs Form (CF) 7501) for the merchandise as "paints/varnish, aqueous, other." The dates of entry for the merchandise were the same as the dates of importation, February 22 and 28, 1995. The classification of the merchandise stated on the Entry Summary was subheading 3209.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), with duty in the amount of $5,527.83 for the first importation and $7,356.06 for the second. The entries were liquidated as entered, with the first entry being liquidated on June 9, 1995, and the second entry being liquidated on July 7, 1995.

By letter to Customs of February 15, 1996 (received by Customs on the same date), the broker for the protestant requested "* * * a refund of duties as provided for under the provisions of [19] CFR 181.31." According to this letter:

> This correspondence constitutes a Post-Importation Claim and request for refund of duties as provided for in Article 502(3) of the North American Free Trade Agreement and 19 CFR [Part] 181 Subpart D. This claim * * * involves the following entries [the February 22 and 28, 1995, entries described above are listed] covering goods for which no claim for preferential tariff treatment was made at the time of importation.
>
> Our client hereby states that the goods qualified as originating goods at the time of importation and provides copies of the Certificates of Origin pertaining to the goods in question.
>
> It is further stated by our client that: 1) no copy of the entry summary documentation for the involved entries was provided to any other party; 2) they are not aware of any claim for refund, waiver or reduction of duties relating to these goods; and 3) neither a protest nor a petition or request for reliquidation relating to these goods has been filed.

Included with the above letter was a February 14, 1996, NAFTA Certificate of Origin, for the period January 1 through December 31, 1995, listing the merchandise described (by number) in the entry documentation (the numbers in the invoice for the February 22, 1995, entry are not legible enough to be certain that they are the numbers on the Certificate of Origin). The tariff classification listed on the Certificate of Origin for the merchandise under consideration is "320910."

According to the file, upon receipt of the above-described February 15, 1996, letter, Customs advised the broker that the Certificate of Origin was not considered valid because the classification on the Certificate was different than that on the Entry Summary. When, after several weeks, the problem was not rectified, the post-importation duty refund claim, in the February 15, 1996, letter was denied by letter from Customs of June 10, 1996, in which the reason for denial was stated as "[y]ou provided a certificate of origin with the wrong classification which cannot be accepted for a NAFTA claim."

By letter of May 8, 1996 (received by Customs on the same date), the broker for the importer requested "* * * under the provisions of 19 CFR 173.4, the correction of a 'clerical

error' pursuant to (19 U.S.C. 1520(c)(1)] on [the entries involved in this matter]. According to this letter:

> At the time of submission of the entry, and entry summary (CF 7501), one of our clerks, through a typographical error, put the wrong fifth (5th) digit on the HTSUS number, using HTSUS 3209.90.0000 instead of 3209.10.0000, and duties were paid according to the wrong classification.

With this letter, the broker enclosed copies of "Chemical, Product, and Company Information" stated to show that "the product is indeed acrylic." In this letter, the broker referred to the February 15, 1996, post-importation duty refund claim, noting that the NAFTA Certificate of Origin submitted with that claim shows "HTSUS 3209.10." The request for reliquidation under 19 U.S.C. 1520(c)(1) was also denied on June 10, 1996, with the stated basis for denial being "[a]n error in the classification of merchandise is correctable by the filing of a 19 U.S.C. 1514 protest within 90 days of liquidation; relief is not available under 19 U.S.C. 1520(c)(1)."

On June 26, 1996, the protest under consideration was filed, against "disallowance of a Post-Importation NAFTA refund claim for the entries covered * * *." According to the protest:

> [The February 15, 1996, post-importation NAFTA duty refund claim] was denied * * * because the classification on the Certificate of Origin (HTSUS 3209.10) in block # 6, and the entry (HTSUS 3209.90) was different. The Certificate of Origin classification was correct. An error was made on the C.F. 7501. Regardless of the classification, HTSUS 3209.10 or HTSUS 3209.90, the importer states that the goods qualified as originating goods and both of these classifications are "free" under the preferential NAFTA duty rate for goods that qualify as originating goods.

Further review was requested and granted.

Issue:

May the protest under consideration be granted.

Law and Analysis:

Initially, we note that denial of a post-importation duty refund claim under 19 U.S.C. 1520(d) is protestable under 19 U.S.C. 1514 (see Treasury Decision (T.D.) 95–68 (Customs Bulletin & Decisions of September 20, 1995, vol. 29, no. 38, pages 12–13). We note also that the protest under consideration was filed within 90 days of the date of the June 10, 1996, denial of the post-importation duty refund claim and, therefore, was timely (see 19 U.S.C. 1514(c)(3)(B) and 19 CFR 174.12(e)(2)). We, note that the February 15, 1996, post-importation duty refund claim under section 1520(d) was timely (filed within 1 year of importation) (although the May 8, 1996, request for reliquidation under section 1520(c)(1) was also timely (within 1 year of liquidation), the denial of the section 1520(c)(1) request was not protested).

Under 19 U.S.C. 1520(d):

> Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the [NAFTA] rules of origin * * * for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—
>
> (1) a written declaration that the good qualified under those rules at the time of importation;
>
> (2) copies of all applicable NAFTA Certificates of Origin * * *; and
>
> (3) such other documentation relating to the importation of the goods as the Customs Service may require.

The Customs Regulations promulgated under this provision are found in 19 CFR 181.31 through 181.33. Section 181.32(b) provides what must be contained in a post-importation duty refund claim. The February 15, 1996, post-importation duty refund claim in this case meets the regulatory requirements for the content of such claims.

In a General Notice in the January 29, 1997, Customs Bulletin and Decisions (vol. 31, no. 5, page 1), Customs published its position on certain issues regarding NAFTA post-importation duty refund claims under 19 U.S.C. 1520(d). In this notice, Customs stated:

> [A] post-importation duty refund claim may be granted where the claim involves classification, valuation or other issues that bear directly on the issue of whether the good would have qualified as an originating good.

Customs went on to state that:

> [T]he statute and regulation [section 1520(d) and 19 CFR 181.31] do not authorize Customs, upon receipt of a post-importation duty refund claim, to reliquidate an entry for purposes other than to refund excess *duties* paid on qualifying goods under the NAFTA for which no claim for preferential treatment was made at the time of importation. [Emphasis added.]

On the basis of the above, Customs concluded that "MPF's [merchandise processing fees] may not be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31."

In this case, no claim for preferential tariff treatment under NAFTA was made at the time of filing of the entry summary (see 19 CFR 181.21). The 19 U.S.C. 1520(d) post-importation duty refund claim was filed within 1 year of importation and contained all that is required to be contained in such claims (19 CFR 181.32(b). Duty-free treatment is and was (at the time under consideration) provided for NAFTA originating goods for both the tariff classification stated on the Entry Summary and that stated on the NAFTA Certificate of Origin (we note that the protestant states that the classification on the Certificate of origin is the correct classification). In the February 28, 1995, entry, the invoice lists under products ("producto") two numbers which are the same as two of the numbers listed under the heading "Description of Good(s)" in the NAFTA Certificate of Origin. Thus, the requirements for a section 1520(d) post-importation duty refund claim are met in the case of this entry and the protest may be *GRANTED* as to this entry, *as to duties only*. As stated in the Customs Bulletin & Decisions General Notice quoted above, "[merchandise processing fees] may not be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31.

In the case of the February 22, 1995, entry, as noted above in the FACTS portion of this ruling, the numbers listed in the invoice under "producto" are not legible enough for this office to be certain that they are numbers listed under the heading "Description of Good(s)" in the NAFTA Certificate of Origin. The requirements for a section 1520(d) post-importation duty refund are met in the case of this entry and the protest may be *GRANTED* as to this entry (for duties only), *PROVIDED* that you are satisfied that the merchandise in the entry is covered by the NAFTA Certificate of Origin submitted with the section 1520(d) claim.

Of course, if you are not satisfied that the merchandise in the February 22, 1995, entry is covered by the Certificate of Origin, the protest must be *DENIED* (because the requirement in 19 U.S.C. 1520(d) for a copy of an *applicable* NAFTA Certificate of Origin and the requirement in 19 CFR 181.32(b)(2) for a copy of a Certificate of Origin *pertaining to the good* would not be met). If the numbers for the merchandise in the invoice with the entry documentation in your office for the February 22, 1995, are also not legible enough to be certain that those numbers are covered by the Certificate of Origin, the protestant may be given a reasonable period (no more than 45 days from the date of notice that the invoice is illegible in this regard), to provide a clearer copy.

Holding:

The protest is *GRANTED* (as to duties *only*, merchandise processing fees may *not* be refunded under 19 U.S.C. 1520(d) post-importation duty refund claims), as to the February 28, 1995, entry. The protest is *GRANTED* (as to duties only) as to the February 22, 1995, entry, *PROVIDED* that you are satisfied that the merchandise in the February 22, 1995, entry is covered by the NAFTA Certificate of Origin submitted with the section 1520(d) post-importation duty refund claim. If you, are not so satisfied *(i.e.*, if the invoice in the entry documents is not legible enough to determine that the merchandise described in the invoice is the same merchandise covered by the Certificate of Origin, and the protestant does not provide a satisfactory copy of the invoice within the time-period stated in the LAW AND ANALYSIS portion of this ruling), the protest must be *DENIED*.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office, with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

WILLIAM G. ROSOFF,
Director,
International Trade compliance Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

LIQ–9–01–RR:IT:EC 227605 LTO
Category: Liquidation

PORT DIRECTOR OF CUSTOMS
819 Water Street, Building 6
Laredo, TX 78040

Attn: Protest Section

Re: HQ 227245 *modified;* Protest 2304–96–100159; post-importation duty refund claim; merchandise processing fees; 19 U.S.C. 1514; 19 U.S.C. 1520(d); 19 CFR 181.21(a).

DEAR PORT DIRECTOR:

This is in reference to Protest 2304–96–100159, which was *GRANTED* in part in HQ 227245, dated May 6, 1997. We have found that it is necessary to modify the portion of this decision pertaining to the refund of merchandise processing fees (MPFs) pursuant to 19 U.S.C. 1520(d).

Facts:

In HQ 227245, we found that the requirements for a section 1520(d) post-importation duty refund claim had been met for a particular entry, and granted the protest for this entry, "*as to duties only* (underlining in original)." Quoting the General Notice on Post-Importation Duty Refund Claims Under the NAFTA in the CUSTOMS BULLETIN, Volume 31, Number 5, page 1 (January 29, 1997), we stated that "'[merchandise processing fees] may not be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31.'"

Issue:

Whether MPFs may be refunded pursuant to 19 U.S.C. 1520(d).

Law and Analysis:

On January 29, 1997, Customs published a General Notice setting forth Customs position regarding claims under 19 U.S.C. 1520(d), which concerns post-importation duty refund claims for goods qualifying under the NAFTA rules of origin. Section 1520(d) provides as follows:

> Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—
>
> (1) a written declaration that the good qualified under those rules at the time of importation;
>
> (2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and
>
> (3) such other documentation relating to the importation of the goods as the Customs Service may require.

The regulations issued under 19 U.S.C. 1520(d) can be found in 19 CFR, Part 181, Subpart D.

Claims under section 1520(d) must be filed within one year from the date of importation regardless of the liquidation status of the entry. Further, section 1520(d) provides the exclusive remedy for importers seeking post-importation NAFTA duty treatment. 19 CFR 181.21(a), which closely follows the language of Article 501(1) of the NAFTA, provides that a U.S. importer must, at entry, make a written declaration that the good qualifies for preferential tariff treatment. Such declaration cannot be made unless the importer possesses a "complete and properly executed original Certificate of Origin, or copy thereof." Because section 1520(d) is the exclusive authority to make a post-importation claim, a claim for preference that is raised for the first time in a protest filed after the one-year period expires will be denied. In that situation, the liquidation without NAFTA treatment is presumed to

be correct. Accordingly, an importer cannot, under the guise of challenging a Customs decision, protest its own failure to meet the necessary legal requirements set forth in section 181.21(a).

In the General Notice, we found that MPFs collected pursuant to 19 U.S.C. 58c(a)(9)(A) were not "customs duties." Accordingly, we found that, because MPFs were not "excess [customs] duties," Customs could not refund them pursuant to a section 1520(d) claim. Based on additional material from Customs officials and the public, we have decided to modify this portion of the General Notice, and therefore, HQ 227245. MPFs may be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31.

Holding:

MPFs may be refunded pursuant to 19 U.S.C. 1520(d) and 19 CFR 181.31. Accordingly, refunds of MPFs should be allowed on any entry on which liquidation has not become final.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF LIGHTED ARTIFICIAL PINE GARLAND

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling relating to the tariff classification of lighted artificial pine garlands. These articles consist of artificial pine foliage and a strand of 258 plastic tips and 50 clear lights with plug-in connector cord. Notice of the proposed modification was published on July 2, 1997, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 27, 1997.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 2, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 27, proposing to modify *NY* 814073, dated September 20, 1995, which classified a lighted artificial pine garland as a festive article, in subheading 9505.10.40, Harmonized Tariff Schedule of the United States (HTSUS). One comment was received in response to this notice, opposing the proposed modification.

The commenter maintains the garland is a festive article classifiable in subheading 9505.10.40, HTSUS, stating that it is identified as a Lighted Christmas Garland, is marketed as a Holiday garland, and grouped for sale with unlit garlands, wreaths and Christmas trees. As such, it is essentially a decorative article. The commenter also notes that the lighting set represents only 12 percent of the total cost of the product.

Customs has evaluated this comment but remains of the opinion that the lighted pine garland is provided for as a lighting set of heading 9405. It is important to note that Chapter 95, Note 1(t), HTSUS, excludes electric garlands of all kinds from that Chapter and places them in heading 9405. In addition, the **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). Relevant **ENs** at p. 1705 include within heading 94.05 specialized lamps, to include **electric garlands** (including those fitted with fancy lamps for carnival or entertainment purposes **or for decorating Christmas trees** (Emphasis added). The fact that this article is identified as a *lighted* pine garland emphasizes the significance of the lights.

General Rule of Interpretation (GRI) 6 permits us to examine the subheadings within heading 9405. The lights on a submitted sample, said to be nearly identical to the electric pine garland the subject of *NY* 814073, are in the traditional Christmas colors red, green, blue and orange. Moreover, a substantially similar garland was held to be classifiable in subheading 9405.30.00, HTSUS, because of evidence that, in the trade, wire harnesses with light sockets and bulbs are of a class or kind the principal use of which is as Christmas tree lighting sets. *See HQ* 958221, dated August 7, 1995. For these reasons, we remain of the opinion that subheading 9405.30.00, HTSUS, represents the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying *NY* 814073, dated September 20, 1995, to reflect the proper classification of the Lighted Glacier Pine Garland in subheading 9405.30.00, HTSUS, HTSUS, a provision for lighting sets of a kind used for Christmas trees. *HQ* 960590 revoking *NY* 814073 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: August 6, 1997.

MARVIN AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 6, 1997.

CLA–2 RR:TC:MM 960590 JAS
Category: Classification
Tariff No. 9405.30.00

MS. DEBRA TUFT
SEASONAL SPECIALTIES
11455 Valley View Road
Eden Prairie, MN 55344

Re: *NY* 814073 Modified; glacier pine garland; article with artificial pine foliage and lights with connector cord; lighting fittings, lighting sets of a kind used for Christmas trees; articles for Christmas festivities of plastics, Subheading 9505.10.40; Chapter 95, Note 1(t); *HQ* 958221; GRI 6.

DEAR MS. TUFT:

In *NY* 814073, dated September 20, 1995, the Director, National Commodity Specialist Division, New York Seaport, responded to your letter of August 2, 1995, and confirmed that lighted artificial pine wreaths and garlands were classified as other articles for Christmas festivities, of plastics, in subheading 9505.10.40, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of *NY* 814073 was published on July 2, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 27.

Facts:

The articles in *NY* 814073 were the 24" Lighted Glacier Wreath, item 08890720133, and the 9' Lighted Glacier Pine Garland, item 08890720120. The wreath was said to consist of artificial polyvinyl chloride or pvc pine branches and 87 plastic tips and 50 clear lights with a connector cord. Your ruling request stated the cost of materials to be $4.75. The garland was said to consist of artificial pvc pine foliage and 258 plastic tips and 50 clear lights with connector cord. The cost of the materials was stated to be $7.97. In both cases, the stated cost figures were not broken down by component or material. The ruling did not further describe these articles.

The provisions under consideration are as follows:

9405	Lamps and lighting fittings * * * not elsewhere specified or included * * *:
9405.30.00	Lighting sets of a kind used for Christmas trees * * * 8 percent *ad valorem*

9405.40	Other electric lamps or lighting fittings:
	Of base metal:
9405.40.60	Other * * * 6.6 percent *ad valorem*
9405.40.80	Other * * * 3.9 percent *ad valorem*

Issue:

Whether the Lighted Glacier Pine Garland is a lighting set of a kind used for Christmas trees; whether for tariff purposes it is other electric lamps and lighting fittings.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states in part that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable. For the purposes of GRI 6, the relative section, chapter and subchapter notes also apply, unless the context requires otherwise.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Festive, carnival or other entertainment articles, to include garlands, are provided for in heading 9505. However, Chapter 95, Note 1(t), HTSUS, excludes electric garlands of all kinds, and refers them to heading 9405. For this reason, the Lighted Glacier Pine Garland described in *NY* 814073 is not provided for in heading 9505. In addition, relevant **ENs** at p. 1705 include within heading 94.05 specialized lamps, to include **electric garlands** (including those fitted with fancy lamps for carnival or entertainment purposes **or for decorating Christmas trees** (Emphasis added).

GRI 6 permits us to compare the subheadings of heading 9405. The lights on a submitted sample, said to nearly identical to to the one the subject of *NY* 814073, are in the traditional Christmas colors red, green, blue and orange. Our information is that Christmas tree lighting sets include but are not limited to these traditional seasonal colors. Moreover, they are not limited by length, rather by the number of bulbs, typically 25, 50, or 100 per strand, but such sets may include as few as 10 bulbs. *HQ* 958221, dated August 7, 1995, classified a lighted Canadian pine garland nearly identical to the Lighted Glacier Pine Garland in issue here in subheading 9405.30.00, HTSUS, because of evidence that, in the trade, wire harnesses with light sockets and bulbs belong to a class or kind of goods the principal use of which is as Christmas tree lighting sets.

Holding:

The Lighted Glacier Pine Garland, item 08890720120, is provided for in heading 9405. Under the authority of GRI 1, applied at the subheading level through GRI 6, it is classifiable in subheading 9405.30.00, HTSUS.

NY 814073, dated September 20, 1995, is modified accordingly. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

PROPOSED MODIFICATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF PLANNERS, ORGANIZERS, AGENDAS, DIARIES, AND ADDRESS BOOKS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify four ruling letters pertaining to the tariff classification of planners, organizers, agendas, diaries, and/or address books. Comments are invited with respect to the correctness of the proposed ruling.

DATE: Comments must be received on or before September 26, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW. (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Office of Regulations and Rulings, Textile Branch (202) 482–6976.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify four ruling letters pertaining to the classification of planners, organizers, agendas, diaries, and address books. Comments are invited with respect to the correctness of the proposed ruling.

In the following ruling letters, Customs classified in subheading 4820.10.4000, HTSUSA, certain articles of stationery in which bound components intended to facilitate daily record keeping were inserted into the interior slots or pockets of a binder, folder, or other outer covering: Headquarters Ruling Letter (HQ) 089960, dated February 10, 1992, HQ 088791, dated March 19, 1992, HQ 951076, dated March 18, 1992, and HQ 950984, dated January 27, 1992. These rulings are set forth, respectively, as Attachments "A" through "D" to this document.

It is Customs position that a planner, organizer, agenda, diary, or address book that is otherwise bound does not become "unbound" merely by virtue of its components being inserted into the slots or pockets of the binder or folder. Since articles possessing inserts of bound components remain bound, such merchandise should be classified in subheading 4820.10.2010, HTSUSA, the provision for "Registers * * * diaries and similar articles: Diaries, notebooks and address books, bound * * *, Diaries and address books." The following proposed rulings modifying, respectively, the rulings set forth as Attachments "A" through "D" above, are set forth as Attachments "E" through "H" to this document: HQ 960542, HQ 960762, HQ 960763, and HQ 960764.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: August 12, 1997.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 10, 1992.
CLA–2 CO:R:C:T 089960 KWM
Category: Classification
Tariff No. 4820.10.2010 and 4820.10.4000

MS. LISA LEVAGGI BOILER
ADDUCI, MASTRIANI, MEEKS & SCHILL
330 Madison Avenue
New York, NY 10017

Re: Your reference BUX–002; agenda/address book; diary; notebook; address book; Heading 4820; planner; organizer.

DEAR MS. BOILER:

We have received your letter dated July 15, 1991, requesting a tariff classification for "leather agendas." Our response follows.

Facts:

Three samples were received with your request: style numbers 12–746, 12–748 and 12–749. All of the articles are referred to as leather agendas. Style numbers 12–746 and 12–749 consist of the following components: a calendar-planner, an address-telephone book, and a blank note pad. Each component is inserted into a leather covered paperboard covered. Style number 12–749 has a snap closure.

Style number 12–748 has similar elements, but also includes sections for expenses, and professional contacts. Style number 12–748 holds the components in a loose leaf ring binder. It also has a snap closure.

Issue:

How is the pocket agenda classified under the Harmonized Tariff Schedule of the United States Annotated?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relevant Section or Chapter Notes.

We note one heading which may be eligible for classification of this product by applying GRI 1. Heading 4820, HTSUSA, provides for, *inter alia*, notebooks, memorandum pads, diaries and similar articles. The term "diary" is defined in *the Compact Edition of the Oxford English Dictionary* 1987 as:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally, or to members of a particular profession, occupation, or pursuit.

Id, at 321. A similar article might be an address book for recording and keeping important addresses and telephone numbers in a single place for easy reference. The sample agendas are designed to keep notes, memoranda, addresses and telephone numbers in a single convenient location, as evidenced by the address-telephone book and the note pad. The calendar facilitates daily record keeping. Customs considers heading 4820 to include within its scope diaries and similar articles such as these. We find the instant articles to be classified in, heading 4820, HTSUSA. Subheading 4820.10.2010, HTSUSA, provides for bound diaries and address books. Style number 12–748, having a ring binder, is bound and is classified in subheading 4820.10.2010, HTSUSA. Customs does not consider style numbers 12–746 and 12–749 to be bound. They are classified in subheading 4820.10.4000, HTSUSA, as "other" diaries and similar articles.

It has been suggested that the provision for wallets and similar containers of heading 4202, HTSUSA, includes the instant articles. We believe that these articles are distinguishable. Agendas such as these are neither used in a similar manner, nor exhibit the physical attributes which would indicate that they are *ejusdem generis* to the items described in heading 4202, HTSUSA.

Having found that heading 4820, HTSUSA, provides, *eo nomine*, for the merchandise, and that no other heading is eligible for consideration, the sample article is classified as a diary, address book or similar article of heading 4820, HTSUSA.

Holding:

The merchandise at issue, described as leather agendas, are classified in subheading 4820.10, HTSUSA, under the provision for registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles. Style number 12–748, having a loose leaf ring binder is classified in subheading 4820.10.2010, HTSUSA. The applicable rate, of duty for this subheading is 4 percent *ad valorem*. Style numbers 12–746 and 12–749, having components inserted in the outer covering are classified in subheading 4820.10.4000, HTSUSA. Articles classifiable in this subheading are free of duty.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 19, 1992.

CLA–2 CO:R:C:T 088791 KWM
Category: Classification
Tariff No. 4820.10.4000

MR. STEPHEN M. KOTT
FOREIGN MERCHANDISE SERVICES
K MART APPAREL CORPORATION
7373 West Side Avenue
North Bergen, NJ 07047–6411

Re: Pocket agenda; agenda/address book; diary; notebook; address book; Heading 4820; planner; organizer.

DEAR MR. KOTT:

We have received your letter dated January 15, 1991, requesting a tariff classification for "vinyl pocket agendas." Your correspondence and a sample of the merchandise were forwarded to this office for a ruling.

Facts:

The merchandise at issue is referred to as an "agenda/address book." It is composed of three pieces of paperboard covered with plastic sheeting and assembled by heat sealing into a tri-fold design. The flap is held secure by a magnet. Inside the cover are a telephone and address indexer and a note pad. Both are secured by inserting the cardboard backing into a slit in the interior plastic surface. Thus, each can be removed and/or replaced when its' usefulness is exhausted. The folder also contains plastic inserts for business cards and a ball point pen. Lastly, we note that your letter also contained a detailed breakdown by cost and by weight of the component materials.

Issue:

How is the pocket agenda classified under the Harmonized Tariff Schedule of the United States Annotated?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relevant Section or Chapter Notes.

We note one heading which may be eligible for classification of this product by applying GRI 1. Heading 4820, HTSUSA, provides for, *inter alia* notebooks, memorandum pads, diaries and similar articles. The term "diary" is defined in *the Compact Edition of the Oxford English Dictionary* 1987 as:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally, or to members of a particular profession, occupation, or pursuit.

Id, at 321. A similar article might be an address book for recording and keeping important addresses and telephone numbers in a single place for easy reference. The sample pocket agenda is designed to keep notes, memoranda, adderesses and telephone numbers in a single convenient location, as evidenced by the address indexer and the note pad. We find that the pen and plastic sleeves complement the other elements in the agenda; moreover, their value in relation to the whole is slight. Customs considers heading 4820 to include within its scope diaries or similar articles which contain complementary items, so long as those complements do not alter the essential character of the primary article. We find the instant article to be classified in heading 4820, HTSUSA. Subheading 4820.10.20, HTSUSA, provides for diaries, notebooks and address books, bound. Customs does not consider these articles bound. They are more properly classified in subheading 4820.10.40, HTSUSA, "other" diaries.

It has been suggested that the provision for wallets and similar containers of heading 4202, HTSUSA, includes the instant articles. We believe that these articles are distinguishable. Agendas such as these are neither used in a similar manner, nor exhibit the physical attributes which would indicate that they are *ejusdem generis* to the items described in heading 4202, HTSUSA.

Having found that heading 4820, HTSUSA, provides, *eo nomine*, for the merchandise, and that no other heading is eligible for consideration, the sample article is classified as a diary, address book or similar article of heading 4820, HTSUSA.

Holding:

The merchandise at issue, described as a pocket agenda, is classified in subheading 4820.10.4000, HTSUSA, under the provision for registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: other. Articles classifiable in this subheading are free of duty.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 18, 1992.

CLA–2 CO:R:C:T 951076 jb
Category: Classification
Tariff No. 4820.10.4000 and 4820.10.2020

MR. THOMAS E. BERNSTEIN
LEEDS LEATHER PRODUCTS
4431 William Penn Highway
Murrysville, PA 15668

Re: "Pocket Secretary" (telephone/address book, calendar and notebook); "President Writing Pad" (leather holder with pad of writing paper); *eo nomine* provision; Heading 4820.

DEAR MR. BERNSTEIN:

This is in response to your letter dated January 8, 1992 to our New York office in which you requested a tariff classification ruling under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) on the merchandise described below. Samples were provided. Our response follows.

Facts:

Two samples were received with your request: style number 1000–03, referred to as "Pocket Secretary", and 1000–01, referred to as "President Writing Pad". Both items will be manufactured in China.

The first item, "Pocket Secretary", is a 3½ x 7 inch folding leather case which contains three independent paper articles: a telephone/address book, a 20-month engagement calendar book, and a note pad. These are held in place by means of cardboard appendages slipped into pockets on the inside of the leather case.

The second item, "President Writing Pad", is a 9½ x 12½ inch leather folder containing an 8½ x 11 inch pad of lined writing paper. The cardboard backing sheet of the pad is slipped into a large pocket inside the leather folder, which also incorporates a pen holder and an additional pocket for loose papers.

Issue:

Whether the subject merchandise is classifiable under heading 4820 of the Harmonized Tariff of the United States Annotated (HTSUSA), which provides for, *inter alia*, notebooks, letter pads, memorandum pads, diaries and similar articles?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may be applied in the order of their appearance.

Style 1000–03. "Pocket Secretary"

Heading 4820, HTSUSA, provides for:

> Registers, account books, notebooks, order books, receipt books, letter pads, **memorandum pads, diaries and similar articles** (emphasis added), exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationary, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:

In Headquarters Ruling (HQ) 089960 dated February 10, 1992 and 089850 dated January 8, 1992, merchandise similar to the submitted sample was examined. In those rulings it was decided that an article which featured an address book, a note pad and calendar was considered similar to a diary.

The term "diary" as defined by the *Compact Edition of the Oxford English Dictionary* 1987, states:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally, or to members of a particular profession, occupation, or pursuit.

As was found in HQ 089960:

> A similar article might be an address book for recording and keeping important addresses and telephone numbers in a single place for easy reference. The sample agendas are designed to keep notes, memoranda, addresses and telephone numbers in a single convenient location, as evidenced by the address-telephone book and note pad. The calendar facilitates daily record keeping. Customs considers heading 4820 to include within its scope diaries and similar articles such as these.

The "Pocket Secretary", Style 1000–03, containing a calendar, address book and note pad is designed to keep daily records and memoranda. Customs does not consider the submitted article to be bound. As such, proper classification is under subheading 4820.10.4000, HTSUSA, as "other" diaries and similar articles

Style 1000–01 "President Writing Pad"

Heading 4820, HTSUSA, provides, *inter alia*, for notebooks, memorandum pads, diaries, and similar articles. The term "memorandum pad" is not defined *per se* in the dictionary, but is found under two separate entries in *Webster's Ninth New Collegiate Dictionary* 1991:

> memorandum: 1. an informal record; also: a written reminder
>
> pad: 4. a collection of sheets of paper glued together at one end

Considered as one term, a "memorandum pad" is an article featuring a block of blank pages attached at one end to facilitate note taking.

The submitted sample, by virtue of its design, a leather folder incorporating a pen holder and additional pockets for loose papers, emphasizes the distinctive function of the article. The role of the "President Writing Pad" is to provide a convenient and organized method in which to take notes. Memorandum pads are specifically provided for under subheading 4820.10.2020, HTSUSA, under the provision for memorandum pads, letter pads and similar articles.

Holding:

Heading 4820, HTSUSA, provides, *eo nomine*, for the merchandise at issue. Style 1000–03, "Pocket Secretary", is classified in subheading 4820.10.4000, HTSUSA, under the provision for registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: other. Articles classifiable in this subheading are free of duty. Style 1000–01, "President writing Pad", is classifiable under subheading 4820.10.2020, HTSUSA, under the provision for diaries, notebooks, and ad-

dress books, bound; memorandum pads, letter pads and similar articles * * * memorandum pads, letter pads and similar articles. The applicable rate of duty is 4 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 27, 1992.

CLA–2 CO:R:C:T 950984 CRS
Category: Classification
Tariff No. 4820.10.4000

ADVANCE SHIPPING CO., INC.
30 Vesey Street
New York, NY 10007

Re: Agenda book; diaries and similar articles; HRL 089850.

DEAR SIRS:

This is in reply to your letter dated December 20, 1991, to our New York office, on behalf of Michael Stevens, Ltd., in which you requested a tariff classification ruling under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was provided.

Facts:

The merchandise in question is an agenda book consisting of an imitation leather cover, a memorandum pad, an address book and a ball point pen. The article is of bifold construction and when closed measures 4¼ inches by 6¼ inches by 1 inch. The address book etc., insert into sleeves in the sides and center of the cover. The agenda fastens by means of a snap closure. The cover will be manufactured in China; the printed matter in Hong Kong.

Issue:

The issue presented is whether the article in question is classifiable as a diary.

Law and Analysis:

Heading 4820, HTSUSA, provides, *inter alia*, for diaries and similar articles. The term "diary" is defined in *The Compact Edition of the Oxford English Dictionary* 327 (1987) as:

> 2. A book prepared for keeping a daily record, or having spaces with printed pages for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally, or to members of a particular profession, occupation, or pursuit.

The instant agenda is designed to keep daily records, addresses and memoranda. While the agenda also includes a pen, Customs is of the view that heading 4820 contemplates diaries that contain complementary goods such as a pen or pencil, so long as these items do not transform the article's essential character. Headquarters Ruling Letter (HRL) 089850 dated January 8, 1992.

Holding:

The article in question is classifiable in subheading 4820.10.4000, HTSUSA, under the provision for registers, account books, notebooks, order books, receipt books, letter pads,

memorandum pads, diaries and similar articles: other. Articles classifiable in this subheading are free of duty.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 960542 GGD
Category: Classification
Tariff No. 4820.10.2010

LISA LEVAGGI BORTER, ESQUIRE
MEEKS & SHEPPARD
330 Madison Avenue
New York, NY 10017

Re: Modification of Headquarters Ruling Letter (HQ) 089960; Heading 4820; diaries; planners; organizers; agendas; inserted bound components; HQ 953413 (March 29, 1993).

DEAR MS. BORTER:

In HQ 089960, issued February 10, 1992, this office classified three styles of leather agendas. Two of the articles, style numbers 12–746 and 12–749, were classified in subheading 4820.10.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Registers * * * diaries and similar articles: Other [than bound]." We have reviewed that ruling and, with respect to style nos. 12–746 and 12–749, have found it to be partially in error. Therefore, this ruling modifies HQ 089960.

Facts:

At the time HQ 089960 was issued, the samples were referred to as leather agendas. Style nos. 12–746 and 12–749 were each composed of a leather-covered, paperboard binder, into which components consisting of a calendar/planner, an address/telephone book, and a blank note pad, were inserted.

Issue:

Whether the fact that bound components intended to facilitate daily record keeping are inserted into the interior slots or pockets of a binder precludes classification of the entire article as a bound diary in subheading 4820.10.2010, HTSUSA.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Chapter 48, HTSUS, covers paper and paperboard; articles of paper pulp, of paper or of paperboard. Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles, binders (looseleaf or other), folders, etc. The EN to heading 4820 indicate that "[t]he goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc." Both style nos. 12–746 and 12–749 are covered by heading 4820, HTSUS.

Each of the leather agendas includes a calendar/planner. Customs has consistently cited to lexicographic sources in determining what constitutes a diary, as opposed to an article that is similar to a diary. The term "diary" is defined in the Compact Edition of the Oxford English Dictionary, 1987, as:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally or to members of a particular profession, occupation, or pursuit.

Each leather agenda's calendar/planner provides the means to record and store daily notations and to organize a schedule. Guided by judicial precedent and the EN referenced above, Customs has also consistently held that inserts which are secured by ring binders are "bound" for classification purposes.

In HQ 953413, issued March 29, 1993, this office confronted the issue of whether certain agendas, planners, organizers, diaries, and address books—in which bound components are slipped into interior slots or pockets—are properly classified as bound diaries. HQ 953413 modified HQ 951736, issued September 17, 1992, which had incorrectly held that "since the subject planner/calendars and address books slip into pockets within the covers, Customs does not consider the articles bound." With respect to that erroneous holding, we stated in HQ 953413, that:

> Upon review, we find that to be an inaccurate statement. An article that is otherwise bound does not become "unbound" merely by virtue of being inserted into a slot of a folder.

HQ 951736 was thereby modified and the merchandise was held to be properly classified in subheading 4820.10.2010, HTSUSA. From early 1993 to the present, Customs has consistently held that similar goods with inserted bound components are classified in the provision for bound diaries. In light of the foregoing, we find that the leather agendas identified by style nos. 12–746 and 12–749 are properly classified as bound diaries in subheading 4820.10.2010, HTSUSA.

There are a small number of aberrant rulings in addition to HQ 089960, in which comparable goods having inserted components have been erroneously classified in subheading 4820.10.4000, HTSUSA. See HQ 088791, issued March 19, 1992, HQ 951076, issued March 18, 1992, and HQ 950984, issued January 27, 1992. Action is being taken to modify or revoke those rulings as well.

Holding:

The leather agendas identified by style numbers 12–746 and 12–749 are classified in subheading 4820.10.2010, HTSUSA, which provides for "Registers * * * diaries and similar articles: Diaries, notebooks and address books, bound * * *, Diaries and address books." The general column one duty rate is 2.8 percent *ad valorem*.

HQ 089960, issued February 10, 1992, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:TE 960762 GGD
Category: Classification
Tariff No. 4820.10.2010

MR. DAVID PENROD
INTERNATIONAL LOGISTICS
KMART CORPORATION
3100 West Big Beaver Road
Troy, MI 48084-3163

Re: Modification of Headquarters Ruling Letter (HQ) 088791; Heading 4820; diaries; agendas; address books; inserted bound components; HQ 953413 (March 29, 1993).

DEAR MR. PENROD:

In HQ 088791, issued March 19, 1992, this office classified an article described as a vinyl pocket agenda, identified by style number 5522, in subheading 4820.10.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Registers * * * diaries and similar articles: Other [than bound]." We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes HQ 088791.

Facts:

At the time HQ 088791 was issued, the sample was referred to as an "agenda/address book" composed of paperboard covered with plastic sheeting and assembled in a tri-fold design. Inside the cover, a telephone/address indexer and a note pad were secured by the insertion of their cardboard backings into a slit in the interior plastic surface. Information submitted at the time of the ruling indicated that an "ID & YEAR CALENDAR CARD" was also included as a component. Each component could be removed and replaced when its usefulness had been exhausted.

Issue:

Whether the fact that bound components—intended to store addresses and facilitate daily record keeping—are inserted into the interior slots or pockets of a binder, precludes classification of the entire article as a bound address book or bound diary in subheading 4820.10.2010, HTSUSA.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Chapter 48, HTSUS, covers paper and paperboard; articles of paper pulp, of paper or of paperboard. Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles, binders (looseleaf or other), folders, etc. The EN to heading 4820 indicate that "[t]he goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc." The pocket agenda/address book is covered by heading 4820, HTSUS.

The agenda/address book includes a calendar. Customs has consistently cited to lexicographic sources in determining what constitutes a diary, as opposed to an article that is similar to a diary. The term "diary" is defined in the Compact Edition of the Oxford English Dictionary, 1987, as:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda

> on matters of importance to people generally or to members of a particular profession, occupation, or pursuit.

Guided by judicial precedent and the EN referenced above, Customs has also consistently held that inserts which are secured by ring binders are "bound" for classification purposes.

In HQ 953413, issued March 29, 1993, this office confronted the issue of whether certain agendas, diaries, and address books—in which bound components are slipped into interior slots or pockets—are properly classified as bound diaries and address books. HQ 953413 modified HQ 951736, issued September 17, 1992, which had incorrectly held that "since the subject planner/calendars and address books slip into pockets within the covers, Customs does not consider the articles bound." With respect to that erroneous holding, we stated in HQ 953413, that:

> Upon review, we find that to be an inaccurate statement. An article that is otherwise bound does not become "unbound" merely by virtue of being inserted into a slot of a folder.

HQ 951736 was thereby modified and the merchandise was held to be properly classified in subheading 4820.10.2010, HTSUSA. From early 1993 to the present, Customs has consistently held that similar goods with inserted bound components are classified in the provision for bound diaries and address books. In light of the foregoing, we find that the pocket agenda identified by style no. 5522 is properly classified as a bound diary in subheading 4820.10.2010, HTSUSA.

There are a small number of aberrant rulings in addition to HQ 088791, in which comparable goods having inserted components have been erroneously classified in subheading 4820.10.4000, HTSUSA. See HQ 089960, issued February 10, 1992, HQ 951076, issued March 18, 1992, and HQ 950984, issued January 27, 1992. Action is being taken to modify or revoke those rulings as well.

Holding:

The pocket agenda/address book identified by style number 5522 is classified in subheading 4820.10.2010, HTSUSA, which provides for "Registers * * * diaries and similar articles: Diaries, notebooks and address books, bound * * *, Diaries and address books." The general column one duty rate is 2.8 percent *ad valorem*.

HQ 088791, issued March 19, 1992, is hereby revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 960763 GGD
Category: Classification
Tariff No. 4820.10.2010

MR. THOMAS E. BERNSTEIN
LEEDS BUSINESS ACCESSORIES
4431 William Penn Highway
Murrysville, PA 15668

Re: Modification of Headquarters Ruling Letter (HQ) 951076; Heading 4820; diaries; planners; organizers; agendas; inserted bound components; HQ 953413 (March 29, 1993).

DEAR MR. BERNSTEIN:

In HQ 951076, issued March 18, 1992, this office classified two styles of leather agendas. One of the articles, style number 1000–03, was classified in subheading 4820.10.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Registers * * * diaries and similar articles: Other [than bound]." We have reviewed that ruling and, with respect to style no. 1000–03, have found it to be partially in error. Therefore, this ruling modifies HQ 951076.

Facts:

At the time HQ 951076 was issued, style no. 1000–03 was referred to as a "Pocket Secretary." The article consisted of a folding leather case which measured approximately 3½ inches in width by 7 inches in height. The case contained 3 independent articles of paper—a telephone/address book, a 20-month engagement calendar book, and a note pad. The 3 components were held in place by means of cardboard appendages which slipped into pockets on the interior of the leather case.

Issue:

Whether the fact that bound components intended to facilitate daily record keeping are inserted into the interior slots or pockets of a binder precludes classification of the entire article as a bound diary in subheading 4820.10.2010, HTSUSA.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Chapter 48, HTSUS, covers paper and paperboard; articles of paper pulp, of paper or of paperboard. Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles, binders (looseleaf or other), folders, etc. The EN to heading 4820 indicate that "[t]he goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc." Style no. 1000–03 is covered by heading 4820, HTSUS.

The "Pocket Secretary" includes an address book and an engagement calendar. Customs has consistently cited to lexicographic sources in determining what constitutes a diary, as opposed to an article that is similar to a diary. The term "diary" is defined in the Compact Edition of the Oxford English Dictionary, 1987, as:

> 2. A book prepared for keeping a daily record, or having spaces with printed dates for daily memoranda and jottings; also applied to calendars containing daily memoranda on matters of importance to people generally or to members of a particular profession, occupation, or pursuit.

The leather agenda's engagement calendar provides the means to record and store daily notations and to organize a schedule. Guided by judicial precedent and the EN referenced above, Customs has also consistently held that inserts which are secured by ring binders are "bound" for classification purposes.

In HQ 953413, issued March 29, 1993, this office confronted the issue of whether certain agendas, planners, organizers, diaries, and address books—in which bound components are slipped into interior slots or pockets—are properly classified as bound diaries. HQ 953413 modified HQ 951736, issued September 17, 1992, which had incorrectly held that "since the subject planner/calendars and address books slip into pockets within the covers, Customs does not consider the articles bound." With respect to that erroneous holding, we stated in HQ 953413, that:

> Upon review, we find that to be an inaccurate statement. An article that is otherwise bound does not become "unbound" merely by virtue of being inserted into a slot of a folder.

HQ 951736 was thereby modified and the merchandise was held to properly classified in subheading 4820.10.2010, HTSUSA. From early 1993 to the present, Customs has consistently held that similar goods with inserted bound components are classified in the provision for bound diaries. In light of the foregoing, we find that the leather agenda identified by style no. 1000–03 is properly classified as a bound diary in subheading 4820.10.2010, HTSUSA.

There are a small number of aberrant rulings in addition to HQ 951076, in which comparable goods having inserted components have been erroneously classified in subheading 4820.10.4000, HTSUSA. See HQ 089960, issued February 10, 1992, HQ 088791, issued March 19, 1992, and HQ 950984, issued January 27, 1992. Action is being taken to modify or revoke those rulings as well.

Holding:

The "Pocket Secretary" identified by style number 1000–03 is classified in subheading 4820.10.2010, HTSUSA, which provides for "Registers * * * diaries and similar articles: Diaries, notebooks and address books, bound * * *, Diaries and address books." The general column one duty rate is 2.8 percent *ad valorem*.

HQ 951076, issued March 18, 1992, is hereby modified.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 960764 GGD
Category: Classification
Tariff No. 4820.10.2010

ADVANCE SHIPPING COMPANY, INCORPORATED
30 Vesey Street, Room 1705
New York, NY 10007

Re: Modification of Headquarters Ruling Letter (HQ) 950984; Heading 4820; diaries; agendas; address books; inserted bound components; HQ 953413 (March 29, 1993).

DEAR SIR:

In HQ 950984, issued January 27, 1992, this office classified an article described as an "Agenda Book" in subheading 4820.10.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Registers * * * diaries and similar articles: Other [than bound]." We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes HQ 950984.

Facts:

At the time HQ 950984 was issued, the sample was referred to as an "Agenda Book" consisting of an imitation leather cover, a memorandum pad, an address book, and a ball point pen. The article was of bifold construction which, when closed, measured approximately 4¼ inches by 6¼ inches by 1 inch. The address book and memorandum pad were secured by the insertion of their backings into sleeves in the sides and center of the cover.

Issue:

Whether the fact that bound components—one of which is intended to store addresses—are inserted into the interior sleeves or pockets of a binder, precludes classification of the entire article as a bound address book or bound diary in subheading 4820.10.2010, HTSUSA.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Chapter 48, HTSUS, covers paper and paperboard; articles of paper pulp, of paper or of paperboard. Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles, binders (looseleaf or other), folders, etc. The EN to heading 4820 indicate that "[t]he goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc." The "Agenda Book" is covered by heading 4820, HTSUS.

The "Agenda Book" at issue includes an address book. In HQ 953413, issued March 29, 1993, this office confronted the issue of whether certain agendas, diaries, and address books—in which bound components are slipped into interior slots or pockets—are properly classified as bound diaries and address books. HQ 953413 modified HQ 951736, issued September 17, 1992, which had incorrectly held that "since the subject planner/calendars and address books slip into pockets within the covers, Customs does not consider the articles bound." With respect to that erroneous holding, we stated in HQ 953413, that:

> Upon review, we find that to be an inaccurate statement. An article that is otherwise bound does not become "unbound" merely by virtue of being inserted into a slot of a folder.

HQ 951736 was thereby modified and the merchandise was held to be properly classified in subheading 4820.10.2010, HTSUSA. From early 1993 to the present, Customs has consistently held that similar goods with inserted bound components are classified in the provision for bound diaries and address books. In light of the foregoing, we find that the "Agenda Book" is properly classified as a bound diary in subheading 4820.10.2010, HTSUSA.

There are a small number of aberrant rulings in addition to HQ 950984, in which comparable goods having inserted components have been erroneously classified in subheading 4820.10.4000, HTSUSA. See HQ 089960, issued February 10, 1992, HQ 951076, issued March 18, 1992, and HQ 088791, issued March 19, 1992. Action is being taken to modify or revoke those rulings as well.

Holding:

The article identified as an "Agenda Book" is classified in subheading 4820.10.2010, HTSUSA, which provides for "Registers * * * diaries and similar articles: Diaries, notebooks and address books, bound * * *, Diaries and address books." The general column one duty rate is 2.8 percent *ad valorem*.

HQ 950984, issued January 27, 1992, is hereby revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 134

RIN 1515–AB61

COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR FROZEN IMPORTED PRODUCE

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking; additional comment period.

SUMMARY: This document provides interested members of the public an additional 60 days to submit written comments on a proposal to amend the Customs Regulations regarding the country of origin marking of imported frozen produce. The proposed amendment would revise the regulations to mandate front panel marking of imported frozen produce.

DATES: Comments must be received on or before October 17, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 23, 1996, Customs published a Notice of Proposed Rulemaking (61 FR 38119) soliciting comments on a proposal to require that the country of origin of frozen imported produce be marked on the front panel of their retail packages to comply with the statutory requirement that the country of origin marking be in a "conspicuous place." On September 23, 1996, the comment period closed.

Subsequent to the close of the comment period, Customs received a large number of additional comments and other correspondence concerning this matter. In order to afford Customs an appropriate opportunity to consider the points raised in those comments and other correspondence received outside the prescribed comment period, and in order to provide an additional opportunity for the general public to submit comments on this matter which continues to engender significant interest, Customs has decided to reopen this matter for public comment for 60 more days. In order to ensure consideration of the most complete record possible, Customs will, after the close of the new public comment period, give consideration to all comments and other correspondence already received during or after the original comment period as well as all comments received during the new public comment period herein. Accordingly, there is no need to re-submit copies of any comments previously submitted to Customs with respect to this proposed rulemaking.

Dated: August 12, 1997.

GEORGE J. WEISE,
Commissioner of Customs.

[Published in the Federal Register, August 18, 1997 (62 FR 43958)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
R. Kenton Musgrave
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

Clerk

Raymond F. Burghardt

Decisions of the United States Court of International Trade

(Slip Op. 97–107)

FAG ITALIA S.P.A., FAG BEARINGS CORP., SKF USA INC., AND SKF INDUSTRIE S.P.A., PLAINTIFFS AND DEFENDANT-INTERVENORS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., DEFENDANT-INTERVENOR AND PLAINTIFF

Consolidated Court No. 95–03–00335–S

The Torrington Company ("Torrington") challenges the Department of Commerce, International Trade Administration's ("Commerce") explanation of its application of the reimbursement regulation in exporter's sales price ("ESP") situations contained in Commerce's *Results of Redetermination Pursuant to Court Remand, FAG Italia S.p.A. v. United States, Slip Op. 96–187 (Nov. 22, 1996)* ("*Remand Results*"). Torrington moves for an order directing Commerce to issue a second redetermination and either apply the reimbursement regulation on the basis of evidence already submitted or collect the necessary additional evidence.

Held: Plaintiff's motion for a second redetermination is denied. The Remand Results are affirmed in all respects.

[Plaintiff's motion is denied. The Remand Results are affirmed. Case dismissed.]

(Dated July 29, 1997)

Grunfeld, Desiderio, Lebowitz & Silverman LLP, (Max F. Schutzman and *Andrew B. Schroth)* for plaintiffs and defendant-intervenors FAG Italia S.p.A. and FAG Bearings Corporation.

Howrey & Simon, (Herbert C. Shelley, Alice A. Kipel and Anne Talbot) for plaintiffs and defendant-intervenors SKF USA Inc. and SKF Industrie S.p.A.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis);* of counsel: *Dean A. Pinkert,* Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (Terence P. Stewart, Wesley K. Caine, Geert De Prest and *Lane S. Hurewitz)* for defendant-intervenor and plaintiff The Torrington Company.

OPINION

TSOUCALAS, *Senior Judge:* On November 22, 1996, this Court, in *FAG Italia S.p.A. v. United States*, 20 CIT ___, 948 F. Supp. 67 (1996), remanded to the Department of Commerce, International Trade Administration ("Commerce"), the final determination concerning the fourth

antidumping duty administrative reviews of antifriction bearings ("AFBs") imported from Italy, entitled *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders ("Final Results")*, 60 Fed. Reg. 10,900 (1995), as amended, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Amendment to Final Results of Antidumping Duty Administrative Reviews and Recision of Partial Revocation of Antidumping Duty Order ("Amended Final Results")*, 60 Fed. Reg. 16,608 (1995). On remand, the Court instructed Commerce to: (1) utilize the approved tax-neutral methodology for adjusting for value-added taxes for the dumping margins of FAG Italia S.p.A. and FAG Bearings Corporation (collectively "FAG") and SKF USA Inc. and SKF Industrie S.p.A. (collectively "SKF"); (2) explain the circumstances in which it will apply the reimbursement regulation in exporter's sales price ("ESP") situations; and (3) correct the clerical errors with respect to FAG's U.S. sales.

On January 31, 1997, Commerce released draft remand results and invited interested parties to comment. After receiving comments from The Torrington Company ("Torrington"), Commerce filed its *Results of Redetermination Pursuant to Court Remand, FAG Italia S.p.A. v. United States, Slip Op. 96–187 (Nov. 22, 1996) ("Remand Results")*.

Torrington challenges Commerce's explanation of its application of the reimbursement regulation in ESP situations contained in Commerce's Remand Results. Torrington moves for an order directing Commerce to issue a second redetermination and either apply the reimbursement regulation on the basis of evidence already submitted, or collect the necessary additional evidence.

DISCUSSION

On remand, Commerce clarified that it will apply the reimbursement regulation "if record evidence demonstrates that the exporter directly pays antidumping duties for the importer or reimburses the importer for such duties in ESP situations." *Remand Results* at 5. In response to a request by Torrington to reopen the administrative record, Commerce insists that its position in the Remand Results is consistent with its prior policy and previous court decisions. *Id.* at 5–6. Commerce also argues that further evidence of intra-company transfers would not support the application of the reimbursement regulation since such transfers are not *per se* evidence of reimbursement. *Id.* at 9.

Torrington insists that Commerce has changed its position and, therefore, should be required to reopen the administrative review and investigate the possibility of reimbursement. Torrington contends that, in light of Commerce's new position, domestic industry should have the opportunity to present new evidence. *Torrington's Comments on Commerce's Remand Results ("Torrington's Comments")* at 3–4. Torrington further maintains that the evidentiary burden placed on domestic in-

dustry by Commerce's new policy "reduces the reimbursement regulation to a practical nullity." *Id.* at 4.

The Court recently addressed this precise issue in *Torrington Co. v. United States*, 21 CIT ____, Slip Op. 97–106 (July 28, 1997) (holding that Commerce's explanation and application of the reimbursement regulation during the fourth administrative review of AFBs from France was in accordance with law). In upholding Commerce's explanation, the Court stated that "Commerce has not changed its approach to the reimbursement regulation in a manner requiring a reopening of the administrative record." *Torrington*, 21 CIT at ____, Slip Op. 97–106, at 5. The facts of this case are identical to those in *Torrington*, and, therefore, the Court sustains Commerce on this issue.

2. *Other Issues:*

Pursuant to this Court's order, Commerce applied a tax-neutral methodology for adjusting for value-added taxes. *Remand Results* at 2–3. Commerce also corrected a clerical error affecting the calculation of FAG's margin. *Id.* at 10. The Court finds all of the above actions to be in accordance with the Court's remand order in *FAG Italia S.p.A.*, 20 CIT at ____, 948 F. Supp. at 77, and consistent with law. Therefore, the Court affirms Commerce's Remand Results.

CONCLUSION

In accordance with the foregoing opinion, the Court finds that Commerce's Remand Results are consistent with law and supported by substantial evidence on the record. Consequently, Commerce's Remand Results are affirmed and this case is dismissed.

(Slip Op. 97–108)

MITSUI PETROCHEMICALS (AMERICA), LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–02–00107

[Plaintiff challenges Customs' classification of chemical compound known as Visnex. *Held:* Visnex imported for sole usage as a viscosity improver for lubricating oil is correctly classified under the importer's claimed provision, HTSUS subheading 3811.29.00, which provides the most specific description of the subject merchandise.]

(Decided July 30, 1997)

Siegel, Mandell & Davidson, P.C. (Brian S. Goldstein and Laurence M. Friedman) for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, *(Mikki Graves Walser)* for defendant.

OPINION

MUSGRAVE, *Judge:* Plaintiff Mitsui Petrochemicals America, Ltd. ("Mitsui") brings this action to contest the classification made by the United States Customs Service ("Customs") on imports of the chemical compound known as Visnex XLM–12 ("Visnex"). Customs classified and liquidated Visnex under Harmonized Tariff Schedule of the United States ("HTSUS") subheading 3902.30.00 which provides for propylene copolymers. Mitsui asserts that Visnex is correctly classified under HTSUS subheading 3811.29.00 which covers viscosity improvers as additives for lubricating oils. Both parties have moved for summary judgment pursuant to CIT R. 56. The Court has jurisdiction over this action under 28 U.S.C. § 1581(a) and finds that there is no genuine issue of material fact and grants Mitsui's motion for summary judgment for classifying Visnex under HTSUS subheading 3811.29.00.

BACKGROUND

The subject merchandise is sold under the name of Visnex XLM–12 and is composed of the two monomers ethylene and propylene in equal proportions. Visnex also contains a stabilizer/antioxidant known as Irganox 1010 ("Irganox") in the amount of 1,500 parts per million. Visnex is properly described as a liquid although it exhibits qualities not usually associated with a liquid such as it can be shredded and cut with a knife. Upon visual inspection, Visnex appears as a thick and pliable clear gel. When added to motor oils, Visnex improves the oil's viscosity; that is Visnex makes the motor oil more resistant to flow. Sufficient viscosity is vitally important for motor oils to properly lubricate the engine parts they contact. Motor oils without viscosity improvers lose the ability to protect engine parts at high temperatures. Visnex is used as an oil additive because it does not inhibit the oil's cold flow properties while Visnex markedly improves the oil's high heat viscosity.

Visnex can be combined with oil in a one or two-step process. In the instant case, the two-step process is utilized: Visnex is first shredded into small lumps and is added to a small batch of the base oil where it is dissolved; this mixture is then diluted with the base oil until the desired ratio of Visnex to base oil is achieved.

Upon liquidation of the subject merchandise, Customs classified Visnex as "polymers of propylene or of other olefins, in primary forms: propylene copolymers" under HTSUS subheading 3902.30.00 dutiable at the rate of 2.2¢/kg. plus 7.7% *ad valorem*. Mitsui timely filed a protest arguing that Visnex was properly classified as a "viscosity improver" under HTSUS subheading 3811.29.00 dutiable at the rate of 7% *ad valorem*. Customs denied Mitsui's protest and Mitsui timely filed a complaint with the Court.

STANDARD OF REVIEW

Under 28 U.S.C. § 2639(a)(1), Customs' decision is "presumed to be correct" and the "burden of proving otherwise shall rest upon the party challenging such decision."[1] However, recent decisions from the Court of Appeals for Federal Circuit ("CAFC") have ruled that the presumption of correctness applies solely to factual questions and this Court's duty is to find the correct result.[2] The Court reviews the ultimate question in a classification case *de novo*. As the Court has found, classification decisions entail a three step process.

> The purely factual inquiry in every classification case involves determining what the subject merchandise is and what it does. The purely legal question involves determining the meaning and scope of the tariff provisions. The ultimate mixed question becomes whether the merchandise has been classified under an appropriate tariff provision, or equivalently, whether the merchandise fits within the tariff provision. This ultimate issue involves both a legal and factual component: indeed the ultimate issue is an inseparable hybrid of the discrete factual and legal inquiries and is therefore a mixed question of law and fact reviewable *de novo*.

Bausch & Lomb, Inc. v. United States, 21 CIT ____, ____, 957 F. Supp. 281, 284 (1997). The purely factual inquiry is subject to the "clearly erroneous" standard while the purely legal question and the ultimate mixed question of law and fact are reviewable *de novo*. *Id.* at 285.

In the instant case, the parties do not argue the purely factual or purely legal questions involved in the classification process. What is left for the Court to determine is the ultimate mixed question of law and fact, or whether the facts satisfy or fit the statutory standard which the Court reviews *de novo* to determine the correct result.

Both parties have moved for summary judgment. Summary judgment is proper when "there is no genuine issue as to any material fact and * * * the moving party is entitled to a judgment as a matter of law." CIT R. 56. The Court finds that there is no genuine issue as to any material fact and therefore the Court has the power to render summary judgment.

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[1] 28 U.S.C. § 2639(a)(1) (1994).

[2] The duty of the Court to find the correct result in a classification case stems from both legislative and judicial sources. "[T]he trial court * * * must consider whether the government's classification is correct, both independently and in comparison with the importer's alternative. * * * [T]he court's duty is to find the correct result, by whatever procedure is best suited to the case at hand." *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984). "If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision." 28 U.S.C. § 2643(b). *See Goodman Mfg., Inc. v. United States*, 13 Fed. Cir. (T) ____, ____, 69 F.3d 505, 508 (1995) (the statutory presumption of correctness attaches only to an agency's factual determinations) *and Rollerblade, Inc. v. United States*, 15 Fed. Cir. (T) ____, ____, Ct. No. 96-1397 at 6 (1997) (legal issues are not afforded deference under 28 U.S.C. § 2639 or under the administrative deference standard promulgated in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

DISCUSSION

I. *Competing Tariff Provisions:*

Upon liquidation, Customs classified Visnex under the HTSUS subheading 3902.30.00 which provides:

3902	Polymers of propylene or of other olefins, in primary forms:
* * * * * * *	
3902.30.00	Propylene copolymers * * *

HTSUS (1992). The dutiable rate at liquidation for Visnex was 2.2¢/kg. plus 7.7% *ad valorem*. Mitsui contends that Visnex is properly classified under HTSUS subheading 3811.29.00 and dutiable at 7% *ad valorem*. HTSUS subheading 3811.29.00 provides:

3811	Antiknock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anticorrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils:
* * * * * * *	
3811.21.00	Additives for lubricating oils: Containing petroleum oils or oils obtained from bituminous minerals * * *
* * * * * * *	
3811.29.00	Other * * *

HTSUS (1992).

Under the HTSUS General Rules of Interpretation ("GRI"), the first step in determining the correct classification of an article is to consider the terms of the headings and relative section or chapter notes under GRI 1. Reviewing the terms of the headings, it becomes evident that Visnex could be classified under both subheadings. Visnex is agreed by both parties and the Court to be a propylene copolymer as contemplated by subheading 3902.30.00. Pl.'s Statement of Material Facts at 4 ("Visnex XLM–12 contains a copolymer * * * of balanced (equal weight) proportions of ethylene and propylene."), Def.'s Statement of Material Facts at 1 ("The merchandise is simply an ethylene-propylene copolymer with an appropriate amount of stabilizer added."). However, Visnex is also used as viscosity improver for motor oils placing it under the ambit of subheading 3811.29.00 as well. Def.'s Resp. to Pl.'s Statement of Facts at 2 ("that gives Visnex its utility as a viscosity improver, * * *"), Pl.'s Statement of Material Facts at 5 ("Visnex XLM–12 is designed and produced to be a viscosity improver."). Further, the applicable section and chapter notes do not provide the key to unlocking the correct classification query. Although the parties argue over the correct classification, the Court finds that Visnex "might aptly be classified under either of the competing [subheadings] in the absence of the other one." *Drakenfeld & Co. v. United States*, 2 Ct. Cust. 512, 513 (1912).

Moving through the GRI, GRI 3 states that when the article is

> *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

In determining whether Visnex is *"prima facie"* classifiable under the two subheadings in question, the Court turns to the definition of *prima facie*;

> At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

Black's Law Dictionary 1189 (6th ed. 1990) (citation omitted). As both parties have observed that Visnex can be described as a propylene copolymer under subheading 3902.30.00 as well as a viscosity improver, the Court finds that Visnex is *prima facie* classifiable under the competing tariff provisions.

Pursuant to GRI 3, the Court finds that when an item is *prima facie* classifiable under two tariff subheadings, the subheading that most specifically describes the merchandise will be used for its correct classification. For the reasons that follow, the Court finds that subheading 3811.29.00 is more specific and therefore the correct classification for Visnex.

II. *Specificity:*

HTSUS subheading 3811.29.00 is the most specific and the correct classification for Visnex. GRI 3's rule of specificity is not new but is rather the codification of a long history of classification jurisprudence. In *Homer v. The Collector*, 68 U.S. 486 (1863), the Court examined the correct classification for almonds. In that case the correct classification decision turned on placing almonds under the more specific tariff provision,

> whether an import, whose specific name is unquestioned, and is given specifically, bears also another name generally, in the tariff, strikes at the roots of the judicial function of interpreting statutes.

Id. at 490. Later the Court cited the *Homer* decision for the proposition that "the article will be classified by its specific designation rather, than under a general description." *American Net & Twine Co. v. Worthington*, 141 U.S. 468, 474 (1891) (citations omitted).

In a momentous case, the Supreme Court was faced with a similar issue that is now at bar. In *Fink v. United States*, 170 U.S. 584 (1898), the Court found that the article in question, muriate of cocaine, was classifiable under both of the competing tariff provisions.

> It would then follow that if either of the paragraphs stood alone in the statute, disembarrassed of the provisions found in the other, the preparation might properly come under the head of either. * * * the

> question is, which, if either, of the two is so dominant in its control of the article in question as to exclude the operation thereon of the other? The rule is that this, if possible, is to be determined by ascertaining whether one of the two paragraphs is more definite in its application to the article in question than is the other.

Id. at 586–87. (citations omitted). Since Visnex has been found to be *prima facie* classifiable under the two competing subheadings, classification turns on which subheading is more definite or specific. In *Fink* the Court concluded that

> In its ultimate analysis, therefore, the question asked is only this: Is the genus, chemical salt, more comprehensive than the species, muriate of cocaine? Thus understood, it becomes, of course necessary to answer the first question in the affirmative, and the second in the negative; and it so ordered.

Id. at 587. *See Totes Inc. v. United States,* 69 F.3d 495 (1995), *Better Home Plastics Corp. v. United States,* 20 CIT ____, 916 F. Supp. 1265 (1996).

When the analysis advanced in *Fink* is applied to the facts now before the Court, Visnex is correctly classified as a viscosity improver under subheading 3811.29.00. Subheading 3902.30.00 provides for all propylene copolymers which would presumably include a propylene monomer and any other monomer that might be chemically bonded to it. Although the parties have not apprised the Court of the potential combinations and concentrations that might come under the purview of this subheading, the Court finds that this grouping is comprehensive and, therefore, a general chemical subheading.

In contrast, subheading 3811.29.00 specifically names viscosity improvers as additives for lubricating oils. Visnex is imported for use exclusively as a viscosity improver for lubricating oil. Although Customs claims that Visnex could be used for a viscosity improver as well as a number of other potential uses, Customs did not provide a single example of another actual use for Visnex. Because Visnex is actually used as a viscosity improver for lubricating oil, subheading 3811.29.00 is the most specific classification.

The incontrovertible fact that Visnex is imported *solely* for use as a viscosity improver for lubricating oil is compelling. Similar to the holding in *Fink*, where the Court found that since muriate of cocaine was "solely used as a medicine, the language of paragraph 74 clearly more definitely applies to it than does the generic provision of 'chemical compounds and salts' found in paragraph 76,"[3] Visnex is solely used as a viscosity improver for lubricating oil. It follows that the language of subheading 3811.29.00, which embraces viscosity improvers which are additives for lubricating oil, "more definitely applies" to Visnex than does the generic provision under subheading 3902.30.00, propylene copolymers. As later courts have found, specific use provisions prevail over competing tariff provisions that have no limits on use or other qualifica-

[3] *Fink v. United States,* 170 U.S. 584, 587 (1898) (citations omitted).

tion. *Drankenfeld & Co. v. United States*, 2 Ct. Cust. 512, 515 (1912). See *Totes, Inc. v. United States*, 13 Fed. Cir. (T) ____, 69 F.3d 495, 499 (1995), *United States v. Mobay Chemical Corp.*, 576 F.2d 368, 373, 65 CCPA 53, 59 (1978).

Visnex is composed of equal parts ethylene and propylene monomers. Customs classified Visnex under polymers of propylene but Visnex could have been equally placed under the subheading for polymers of ethylene under heading 3901. In fact, heading 3901 specifically names ethylene-propylene copolymers in the sub-chapter notes: "[heading 3901] also covers ethylene copolymers (for example, ethylene-vinyl acetate copolymers and ethylene-propylene copolymers) in which ethylene is the predominant comonomer." Sub-Chapter I, Section VII, Chapter 39 Notes. The Court finds that the chapter notes provide further support for the resolution that subheading 3902.30.00 is more general than subheading 3811.29.00.

Finally, courts have applied the "more difficult to satisfy" test to determine the more specific of competing tariff provisions. In deciding the correct classification of surge voltage protectors ("SVPs"), the court in *United States v. Siemens*, 68 CCPA 62 (1981), stated that "the provision that more specifically describes the SVPs is the item having requirements which are 'more difficult to satisfy.'" *Id.* at 70. (citing *Ozen Sound Devices v. United States*, 67 CCPA 67, 71, 620 F.2d 880, 883 (1980). Subheading 3902.30.00 describes propylene copolymers which presumably encompasses compounds that have a myriad of applications. In contrast, subheading 3811.29.00 describes viscosity improvers used for additives in lubricating oils which embodies a smaller number of compounds since it has requirements that are "more difficult to satisfy." Although this comparison is not quantifiable, the Court finds that because subheading 3811.29.00 has requirements that are "more difficult to satisfy" it furnishes the more specific, and thus, correct classification for Visnex.

III. *Use Provisions vs.* Eo Nomine *Provisions:*

Mitsui asserts the proposition that an article described by both a "use provision and an *eo nomine* provision with equal specificity is more specifically provided for under the use provision." Plt's Br. in Supp. of Mot. for Summ. J. at 38. (citations omitted). The Court finds that this conclusory statement is not universally applicable. In fact, many courts have found that an article covered under an *eo nomine* provision is preferable over use provisions in certain instances. *Totes, Inc. v. United States*, 13 Fed. Cir. (T) ____, 69 F.3d 495 (1995), *United States v. Simon Saw & Steel Co.*, 51 CCPA 33 (1964), *Border Brokerage Co., Inc. v. United States*, 65 Ct. Cust. 373 (1970). Preference for classification under a use provision is simply an extension of the overarching rule of specificity. In the seminal case of *United States v. Electrolux Corp.*, 46 CCPA 143 (1959), the issue before the court was the correct classification of electric floor poli-

shers. Customs, the appellant, argued that the use provision "household utensils" prevailed over non-use provisions. The court found that,

> We therefore disagree with appellant, on a review of the cases, that there is any imperative in what it chooses to regard as "firmly established" doctrine of use which requires us to classify electric floor polishers as household utensils in paragraph 339. The rule is no more than an aid to construction and one aspect of the broader rule of relative specificity.

Id. at 148. The Court finds that the "doctrine of use" is merely an aid to construction and that the rule of specificity remains at the heart of correct classification.

This logic compels the Court to refocus on the question of whether the use provision implicated here is more specific than the *eo nomine* provision. Mitsui cites *Siemens* for the proposition that a use provision eclipses an *eo nomine* provision. However, *Siemens* held that "in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is *generally* more specifically provided for under the use provision." *United States v. Siemens*, 68 CCPA 62, 70 (1981) (citations omitted) (emphasis original). Specificity remains the standard upon which competing tariff provisions are to be judged. In general, a use provision will describe the article with greater specificity and, therefore, provide the correct classification. In the instant case subheading 3811.29.00 describes Visnex most specifically.

CONCLUSION

For the foregoing reasons, the Court finds that Visnex is correctly classified under HTSUS subheading 381.29.00.

(Slip Op. 97–109)

TIMKEN CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., DEFENDANT-INTERVENORS

Court No. 95–02–00214

The Timken Company challenges the Department of Commerce, International Trade Administration's ("Commerce") explanation of its application of the *Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan ("1995 Koyo Scope Ruling")*, 60 Fed. Reg. 6519 (Feb. 2, 1995), to forging entries subsequent to October 1, 1992, the beginning of the 1992–93 administrative review, in Commerce's *Final Results of Redetermination Pursuant to Court Remand, Timken Co. v. United States, Slip Op. 96–149 (Aug. 28, 1996) ("Remand Results")* (Nov. 25, 1996).

Held: This case is remanded to Commerce to investigate the status of the forgings imported between the publication of the A–588–604 antidumping duty order and October 1, 1992 and found to be within the scope of the A–588–604 antidumping duty order by the 1995 Koyo Scope Ruling; if any such merchandise exists and is not yet liquidated, to liqui-

date that merchandise under the A–588–604 order. Following compliance with this instruction, Commerce's Remand Results are affirmed.

[Plaintiff's motion for a second remand granted in part and denied in part. Case remanded and dismissed.]

(Dated July 31, 1997)

Stewart and Stewart (Terence P. Stewart, James R. Cannon, Jr. and *Roberta K. Maixner)* for plaintiff.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis,* Assistant Director); of counsel: *Carlos A. Garcia,* Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Powell, Goldstein, Frazer & Murphy LLP (Peter O. Suchman, Neil R. Ellis and *Elizabeth C. Hafner)* for defendant-intervenors.

OPINION

TSOUCALAS, *Senior Judge:* On August 28, 1996, this Court remanded to the Department of Commerce, International Trade Administration ("Commerce"), one issue arising from the scope determination, entitled, *Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan ("1995 Koyo Scope Ruling"),* 60 Fed. Reg. 6519 (Feb. 2, 1995). *See Timken Co. v. United States,* 20 CIT ____, ____, 937 F. Supp. 953, 956 (1996). In particular, the Court directed Commerce to provide a rationale for its decision to apply the 1995 Koyo Scope Ruling, which concluded that Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.'s (collectively "Koyo") rough forgings come within the scope of the A–588–604 order covering tapered roller bearings from Japan, to only pending and future administrative reviews. The Timken Company ("Timken") has moved for a second remand and Koyo has commented on the Remand Results.

On November 25, 1996, in compliance with this Court's order, Commerce filed its *Final Results of Redetermination Pursuant to Court Remand, Timken Co. v. United States, Slip Op. 96–149 (Aug. 28, 1996) ("Remand Results"),* with this Court. In the Remand Results, Commerce explained that it intends to apply the 1995 Koyo Scope Ruling to entries of forgings for proceedings initiated, but not completed, prior to the date of the final scope determination. In essence, Commerce intends to apply the ruling to forging entries subsequent to October 1, 1992, the beginning of the 1992–93 administrative review. Commerce explains that its normal practice is to apply a scope determination beginning with the entire period of investigation during which entries of the scope merchandise were first suspended for antidumping purposes. As Customs had classified the forgings under a subheading not covered by the scope of the order in this case, there was no suspension of liquidation of forging entries before the spring of 1993. *Remand Results,* at 4–5. Moreover, Commerce contends its decision is in accord with *FAG Kugelfischer Georg Schafer KGaA v. United States,* 20 CIT ____, ____, 932 F. Supp. 315, 320 (1996). *Id.* at 6.

Timken claims Commerce should apply the scope determination to all forging imports from the time the antidumping duty order was published in 1987. Under 19 U.S.C. § 1675(a)(2) (1988), Timken emphasizes that, in its administrative reviews, Commerce is to review "each entry of merchandise subject to the antidumping duty order." *Timken's Motion for Second Remand Ordering Defendant to Act in Comformance with Slip Opinion No. 96–149 ("Timken's Motion")*, at 4. Timken further notes that a scope determination is, by law, a clarification of what the scope of the order was at the time the order was issued, and cannot later be expanded or modified. *Id.* at 3 (citing *Timken Co.*, 20 CIT at ____, 937 F. Supp. at 954). Timken therefore reasons that it is unlawful to exempt Koyo forgings from the reviews covering imports between the publication of the order and October 1, 1992 from the consequences of the order because they have been found to be within the scope of the order. *Id.* at 3–9. Timken stresses that, assuming Commerce's reliance on the suspension date is relevant, forgings entered before October 1, 1992 that remain unliquidated should unquestionably be included within the scope of the order. *Id.* at 7–8. Finally, Timken claims that Koyo should not be rewarded for intentionally evading the order at issue when any reasonable party would have presumed that forged rings were covered by the order. *Id.* at 9–11.

The Court sustains Commerce's decision to apply the 1995 Koyo Scope Ruling beginning with the entire period of investigation during which entries of the scope merchandise were first suspended for antidumping purposes. As a preliminary matter, the Court notes that the phrase "pending and future reviews," which appears to be the cause of confusion in this case, refers to *the beginning of the period of review during which Customs had suspended liquidation of the subject entries*, and does not include previously-liquidated entries.

This case is similar to *FAG*, 20 CIT at ____, 932 F. Supp. at 318–20, where this Court upheld Commerce's decision to apply an affirmative scope ruling to the entire period of review, even though Customs began suspension of liquidation at the time of the final scope determination. In *FAG*, the Court upheld Commerce's application of the scope determination beginning with the period of review where Customs had first suspended liquidation, stating that Commerce "cannot assess dumping duties against previously-liquidated merchandise, but is required to include sales information for the liquidated merchandise that is within the scope of the order for purposes of calculating assessment rates for remaining unliquidated entries and cash deposits for future entries." *Id.* at ____, 932 F. Supp. at 320. Hence, the *FAG* Court did not require Commerce to apply its affirmative scope determination all the way back to the beginning of the antidumping duty order at issue in that case, and did not require Commerce to re-open previously concluded administrative reviews to apply the scope ruling retroactively. *See id.* Similarly, in this case, Commerce properly exercised its discretion not to delay the issuance of the final results for 1990–92, which were practically com-

pleted at the time Koyo requested a scope determination, and applied the scope determination beginning with the 1992–93 review.[1]

However, Timken correctly contends that the scope determination should apply to forging entries before October 1, 1992 that have not yet been liquidated, if any such entries exist. In this way, Commerce's methodology will remain consistent with this Court's stated position of applying an affirmative scope determination only to merchandise found to be within the scope of the order and not already liquidated. The Court, therefore, remands this issue to Commerce to obtain a status of forgings imported between the publication of the order and October 1, 1992 found to be within the scope of the antidumping duty order and not yet liquidated. The Court's remand for this limited purpose should in no way be construed as a re-opening or re-review of closed proceedings, as it solely encompasses forgings not yet liquidated.

Timken's suggestion that Koyo knowingly evaded duties that any "reasonable" party would have assumed covered by the order is meritless. As Commerce notes, the 1995 Koyo Scope Ruling was the culmination of one of the most complex, time-consuming and difficult scope determinations it has faced in recent years and necessitated two years of research, review and analysis. *See Remand Results*, at 12.

Finally, requiring Commerce to apply a scope ruling to all entries subsequent to the suspension of liquidation at the time of the original investigation is contrary to this Court's stated position regarding previously-liquidated merchandise, as Commerce would have to review sales information and the assessment of duties on entries that have already been liquidated. *See FAG*, 20 CIT at ____, 932 F. Supp. at 320; *Toyota Motor Sales, Inc. v. United States*, 17 CIT 841, 846, 829 F. Supp. 1364, 1369 (1993). Further, such a requirement would result in extensive administrative difficulties, entailing a re-review of old review periods, issuance of new questionnaires, collection of new data and re-verification of completed reviews every time a scope determination is issued. In sum, such a process would create perpetual uncertainty and would be contrary to the principle of finality.[2]

CONCLUSION

Consequently, this case is remanded to Commerce to investigate the status of the forgings imported between the publication of the A–588–604 antidumping duty order and October 1, 1992, and found to be within the scope of that order by the 1995 Koyo Scope Ruling; if any

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[1] Indeed, as Commerce notes, it intentionally delayed the completion of the 1992–93 final review pending the outcome of the 1995 Koyo Scope Ruling so that, if the determination was affirmative, all forging imports from the time Customs suspended liquidation would be assessed with antidumping duties. *See Remand Results*, at 10–11.

[2] Timken's assertion that the 1995 Koyo Scope Ruling is contrary to Commerce's 1990–91 and 1991–92 final results, which stated that it was "deferring" the issue of whether the forgings were covered by the order, is an attempt to reargue an issue it abandoned in earlier stages of this litigation. This Court has clearly stated that "it would be contrary to the interest of justice to permit Timken to amend its complaint [to include this issue] because it * * * abandoned it in it's motion for judgment on the agency record." *Timken Co. v. United States*, Court No. 94–01–00008, *Order*, at 3 (April 18, 1995). Nevertheless, Commerce's deferral of the issue did not constitute suspension, and is not inconsistent with applying the scope determination to "pending and future" reviews, but merely indicates Commerce was continuing to examine the proper classification of Koyo's forgings. By the time the scope determination was issued, these reviews had been concluded.

such merchandise exists and is not yet liquidated, Commerce is to liquidate that merchandise under the A–588–604 order. Following compliance with this instruction, the Remand Results filed by Commerce on November 26, 1996 are affirmed.

(Slip Op. 97–110)

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 95–03–00236

The Timken Company challenges the Department of Commerce, International Trade Administration's ("Commerce") explanation of its application of the *Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan ("1995 Koyo Scope Ruling")*, 60 Fed. Reg. 6519 (Feb. 2, 1995), to forging entries subsequent to October 1, 1992, the beginning of the 1992–93 administrative review, in Commerce's *Final Results of Redetermination Pursuant to Court Remand, Koyo Seiko Co. v. United States, Slip Op. 97–14 (Feb. 4, 1997) ("Remand Results")* (May 5, 1997).

Held: This case is remanded to Commerce to investigate the status of the forgings imported between the publication of the A–588–604 antidumping duty order and October 1, 1992 and found to be within the scope of the A–588–604 antidumping duty order by the 1995 Koyo Scope Ruling; if any such merchandise exists and is not yet liquidated, to liquidate that merchandise under the A–588–604 order. Following compliance with this instruction, Commerce's Remand Results are affirmed.

[Defendant-intervenor's motion for a second remand granted in part and denied in part. Case remanded and dismissed.]

(Dated July 31, 1997)

Powell, Goldstein, Frazer & Murphy LLP (Peter O. Suchman, Neil R. Ellis and *Elizabeth C. Hafner)* for plaintiffs.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis,* Assistant Director); of counsel: *Carlos A. Garcia,* Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (Terence P. Stewart, James R. Cannon, Jr. and *William A. Fennell)* for defendant-intervenor.

OPINION

TSOUCALAS, *Senior Judge:* On February 4, 1997, this Court remanded to the Department of Commerce, International Trade Administration ("Commerce"), one issue arising from the scope determination, entitled, *Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan ("1995 Koyo Scope Ruling")*, 60 Fed. Reg. 6519 (Feb. 2, 1995). *See Koyo Seiko Co. v. United States*, 21 CIT ____, ____, 955 F. Supp. 1532, 1548 (1997). In particular, the Court directed Commerce to provide a rationale for its decision to apply the 1995 Koyo Scope Ruling, which con-

cluded that Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.'s (collectively "Koyo") rough forgings come within the scope of the A–588–604 order covering tapered roller bearings from Japan, to only pending and future administrative reviews.

On May 5, 1997, in compliance with this Court's order, Commerce filed its *Final Results of Redetermination Pursuant to Court Remand, Koyo Seiko Co. v. United States, Slip Op. 97–14 (Feb. 4, 1997) ("Remand Results"),* with this Court. As this case involves the identical issue to that in *Timken Co. v. United States*, 21 CIT ____, Slip Op. 97–109 (July 31, 1997), Commerce has incorporated by reference its remand results in that case, *Final Results of Redetermination Pursuant to Court Remand, Timken Co. v. United States, Slip Op. 96–149 (Aug. 28, 1996)* (Nov. 25, 1996). The Timken Company ("Timken") has also incorporated its motion for a second remand and Koyo has incorporated its comments on the Remand Results from the *Timken* case.

In the Remand Results, Commerce explained that it intends to apply the 1995 Koyo Scope Ruling to entries of forgings for proceedings initiated, but not completed, prior to the date of the final scope determination. In essence, Commerce intends to apply the ruling to forging entries subsequent to October 1, 1992, the beginning of the 1992–93 administrative review. Commerce explains that its normal practice is to apply a scope determination beginning with the entire period of investigation during which entries of the scope merchandise were first suspended for antidumping purposes. As Customs had classified the forgings under a subheading not covered by the scope of the order in this case, there was no suspension of liquidation of forging entries before the spring of 1993. *Remand Results*, at 4–5. Moreover, Commerce contends its decision is in accord with *FAG Kugelfischer Georg Schafer KGaA v. United States*, 20 CIT ____, ____, 932 F. Supp. 315, 320 (1996). *Id.* at 6.

As this Court decided in *Timken*, Commerce's decision is sustained. *See Timken*, 21 CIT at ____, Slip Op. 97–109, at 4–5. However, Commerce is to investigate the status of the forgings imported between the publication of the A–588–604 antidumping duty order and October 1, 1992 and found to be within the scope of the A–588–604 antidumping duty order by the 1995 Koyo Scope Ruling; if any such merchandise exists and is not yet liquidated, to liquidate that merchandise under the A–588–604 order. *See id.* at ____, Slip Op. 97–109, at 5–6. Following compliance with this instruction, the Remand Results filed by Commerce on May 5, 1997 are affirmed.

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